

**Clearinghouse Rule 08-027**  
**DATCP Docket No. 08-R-04**  
**Rules Clearinghouse No. 08-027**

**ORDER**  
**OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,**  
**TRADE AND CONSUMER PROTECTION**  
**ADOPTING RULES**

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following rule *to repeal and recreate* ATCP 123 (title) and 123.01; *to repeal* ATCP 123.14; *to amend* ch. ATCP 123(note), 123.02(1)(a)(note) and (5)(title) and (intro.), 123.04(1)(note) and (2)(f), 123.10(1), (3), (6) and (8), and 123.12(1)(b); *relating to* electronic communications services offered to consumers.

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**Analysis Prepared by the Department of Agriculture,**  
**Trade and Consumer Protection**

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates unfair subscription and billing practices related to telecommunications, cable television and satellite television services that are provided to consumers on a subscription basis. Current DATCP rules are contained in ch. ATCP 123, Wis. Adm. Code. The current rules regulate unfair and deceptive practices, not price levels or service delivery.

This rule updates and clarifies current rule coverage to reflect new service delivery methods and “bundling” practices, and to conform to law changes enacted in 2007 Wis. Act 42. This rule maintains current protection for electronic communications service subscribers, regardless of the method used to deliver the service.

***Statutes Interpreted***

Statutes Interpreted: ss. 100.20 and 100.207, Wis. Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07(1), 100.20(2), 100.207(6)(e) and 100.209(3), Wis. Stats.

### ***Explanation of Statutory Authority***

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 100.207, Stats., to regulate sales and billing practices related to telecommunications. DATCP also has broad authority, under s. 100.20, Stats., to regulate methods of competition and trade practices in business.

### ***Related Rules or Statutes***

The Wisconsin public service commission (PSC) regulates telecommunications service providers (rates and service delivery) to the extent provided under chapter 196, Stats. The department of financial institutions (DFI) and local municipalities regulate video service providers to the extent provided in ch. 66, Stats.

2007 Wisconsin Act 42 changed the way that Wisconsin regulates cable television and other video services. The act provided for state (DFI), rather than local, franchising of video service providers (DATCP retains its authority, and responsibility, to regulate unfair subscription and billing practices). The act also changed prior definitions, and added a new definition of “video services.” This rule incorporates new statutory definitions, in order to maintain the coverage of current rules.

### ***Rule Background***

Current DATCP rules regulate unfair subscription and billing practices related to telecommunications, cable television and satellite television services that are provided to consumers on a subscription basis. The current rules regulate unfair and deceptive practices, not price levels or service delivery. The current rules do all of the following:

- Require providers to disclose subscription terms and conditions.
- Prohibit billing for unordered services.
- Prohibit the imposition of price increases without prior notice and opportunity to cancel.
- Prohibit unfair “negative option” billing practices.

Since DATCP adopted the current rules, business practices and technology have changed. For example, video services can now be delivered over telephone lines. Providers now offer “bundled” service packages that may include local telephone, long-distance telephone, wireless telephone, video, internet access and other services. Consumers may receive a number of these services on one electronic device, and may receive one bill for all of the “bundled” services.

This rule updates and clarifies current rule coverage to ensure that consumers subscribing to electronic communications services (including video services and internet access services) are protected on an equal basis, regardless of the technology or method used to deliver the service. This rule also incorporates new statutory terminology.

Current rules already apply to subscriptions for telecommunications services, including the “conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum.” This rule clarifies that this current coverage includes video services and internet access services. Exclusion of these services would reduce current rule coverage and consumer protection.

This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and clarify what services are covered by the rule. This rule also incorporates new statutory definitions created by 2007 Wis. Act 42.

### ***Rule Content***

This rule does all of the following:

- Re-titles ch. ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communications Services.”
- Defines “electronic communications service” to mean a service, such as telecommunications service, video service, cable service, satellite television service, and internet access service, that involves the conveyance of voice, data, video programming or other information at any frequency over any part of the electromagnetic spectrum. This rule applies to subscription and billing practices related to “electronic communications services” that are provided to consumers on a subscription basis.
- Defines “video programming” and “video service,” consistent with current statutes.
- Changes “telecommunications service or cable television service” where it appears in the main body of the rule to “electronic communications service.”
- Changes other words in the rule text to reflect recent statutory definition changes (2007 Wisconsin Act 42).

### ***Fiscal Impact***

**This rule will have no significant fiscal impact on DATCP or local units of government. A complete fiscal estimate is attached.**

### ***Business Impact***

This rule will have few, if any, negative impacts on business. This rule simply updates the definitions and coverage of current rules to prevent the erosion of current consumer protection regulations. Some video service providers now use new electronic delivery methods that are not covered by current rules. This rule applies existing consumer protection standards to services delivered by those new methods, so consumers will continue to enjoy protection.

This rule will help maintain fair competition between electronic communications service providers, regardless of the delivery method used. Although the current rule covers some small businesses, the modifications made in the proposed rule do not change this coverage or otherwise affect small businesses.

### ***Federal and Surrounding State Regulations***

#### **Federal Regulations**

Congress and the federal communications commission have significantly reduced federal regulation of telecommunications service and video services. The federal government has left, to state governments, much of the responsibility for regulating the business practices of service providers.

Recently, the federal communications commission (FCC) determined that high speed internet access service is an “information service,” and that federal law preempts states from applying traditional “telephone company” rate regulations to that information service. But the FCC also made it clear that it did *not* intend to preempt state laws governing consumer fraud, general commercial dealings, marketing and advertising, as those laws may apply to internet access services. Thus, the FCC did *not* preempt the application of ATCP 123-type regulations to internet access services.

#### **Surrounding State Regulations**

**Surrounding states do not regulate electronic communications subscription and billing practices in the same manner as Wisconsin. The surrounding states take a**

**more *ad hoc* approach – focusing on narrow issues such as the unauthorized switching of long-distance services or consumer protection for users of coin-operated phones. Wisconsin is the only state that has adopted comprehensive subscription and billing practice standards that apply equally to all competing providers of electronic communications services.**

### ***Data and Analytical Methodologies***

This rule does not depend on any complex analysis of data. This rule merely updates current rules to address changes in business practices and technology, and incorporates new definitions created under 2007 Wisconsin ACT 42.

### ***DATCP Contact***

Questions and comments related to this rule may be directed to:

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**SECTION 1.** Chapter ATCP 123 (title) is repealed and recreated to read:

### **Chapter ATCP 123 ELECTRONIC COMMUNICATIONS SERVICES**

**SECTION 2.** Chapter ATCP 123(note) is amended to read:

***NOTE:*** This chapter regulates subscription and billing practices related to ~~telecommunications services and cable television~~ electronic communications services ~~provided~~ offered to consumers.

This chapter is adopted under authority of ss. 100.20(2) and 100.207(6)(e), Stats. Violations of this chapter may be subject to prosecution under ss. 100.20(6), 100.26 (3)

and (6) and, in the case of telecommunications services, s. 100.207(6)(b) and (c), Stats. Persons damaged by violations of this chapter may bring private actions against the violators under ss. 100.20(5) and 100.207(6)(a), Stats.

Federal law recognizes that state administrative rules may under certain circumstances be preempted by federal law or administrative action. It is the position of the department that any provision of this rule that specifically conflicts with any federal law which now exists, or is later enacted or amended, would be superseded by the federal law.

**SECTION 3.** ATPC 123.01 is repealed and recreated to read:

**ATPC 123.01 Definitions.** In this chapter:

**(1)** "Appointed provider of long distance telecommunications services" means a provider of long distance telecommunications services selected for a consumer according to procedures prescribed by the federal communications commission after the consumer fails to select a provider.

**(2)** "Bill" means to represent to a consumer, directly or by implication, that the consumer is obligated to pay a stated amount for electronic communications service pursuant to an existing contract with the provider of that service.

**(3)** "Consumer" means any individual to whom a provider sells, leases, or offers to sell or lease an electronic communications service primarily for personal, family or household purposes.

**(4)** “Disclose” means to make a clear and conspicuous statement that is designed to be readily noticed and understood by the consumer and, if the disclosure is made in writing, which is designed to be retained by the consumer.

**(5)** “Electronic communications service” means a service, such as telecommunications service, video service, cable service as defined under 47 USC 522(6), service provided by a multichannel video programming distributor as defined under 47 USC 522(13), and internet access service as defined in 47 USC 231(e)(4), which involves the conveyance of voice, data, video programming or other information at any frequency over any part of the electromagnetic spectrum. “Electronic communications service” includes the collection, storage, forwarding, switching and delivery of information incidental to the electronic communications service. “Electronic communications service” does not include broadcast service as defined in s. 196.01(1m), Stats., or the transmission of information by means of non-electronic media such as hard-copy newspapers or magazines.

**(6)** “Individual” means a human being.

**(7)** “Long distance telecommunications service” means a long distance toll service provided on a direct-dialed, single message, dial-1 basis between local exchanges.

**(8)** “Person” means an individual, corporation, cooperative, partnership, limited liability company, business trust, or business association or entity.

(9) “Provider” means a person that sells, resells, leases, or offers to sell, resell or lease an electronic communications service to consumers. “Provider” includes an employee or agent that is authorized to act on behalf of and in the name of a provider.

**NOTE:** For example, “provider” includes a telemarketer or other person who sells electronic communications service on behalf of and in the name of a provider.

(10) “Service offering” means an electronic communications service that is offered under a single name or at a single price. A “service offering” includes a category of electronic communications service for which a separate rate is charged by the provider.

(11) “Subscribe” means to enter into a subscription.

(12) “Subscription” means a contract between a provider and a consumer for an electronic communications service that is provided or billed to the consumer on a continuing or periodic basis. “Subscription” includes an oral, written or electronically recorded contract, and includes any material amendment to an existing contract.

(13) “Telecommunications service” has the meaning given in [s. 196.01\(9m\), Stats.](#)

(14) “Video programming” has the meaning given in s. 66.0420(1)(x), Stats.

(15) “Video service” has the meaning given in s. 66.0420(1)(y), Stats.

(16) “Written” or “in writing” means legibly printed on a tangible non-electronic medium, such as paper, which is delivered to a consumer, or legibly printed in electronic form on a television screen or computer monitor if the consumer can readily retrieve, store or print the video image for future reference. “Written” or “in writing” does not include presentation on a medium, such as a billboard, which cannot be conveniently retained by a consumer.

**SECTION 4.** ATCP 123.02(1)(a)(note) is amended to read:

**NOTE:** For example, the identification of a ~~cable television~~ video service tier offering should identify the channels ~~which~~ that comprise ~~that tier~~ the offering.

**SECTION 5.** ATCP 123.02(5)(title) and (intro.) are amended to read:

ATCP 123.02(5)(title) ~~PAY-PER-VIEW CABLE TELEVISION~~ VIDEO PROGRAMMING CHARGES; EXEMPTION. A provider of pay-per-view ~~cable television service~~ need video programming is not required to disclose per-view charges under sub. (1) if all of the following apply:

**SECTION 6.** ATCP 123.04(1)(note) and (2)(f) are amended to read:

**NOTE:** Section ~~134.42(2)~~ 100.209(2)(c), Stats., requires a ~~cable television~~ multichannel video programming distributor, as defined in 47 USC 522 (13), to give a consumer at least 30 days ~~advanced~~ advance written notice before deleting a service or instituting a rate increase. ~~47 USC 76.309 (3) (i) (B) requires a cable television provider to give consumers a 30-day advance notice of any changes in rates or services regulated under 47 USC 543.~~

(2)(f) The subscription change is limited to a change in pay-per-view ~~cable television~~ video programming charges that are exempt from disclosure under s. ATCP 123.02(5).

**SECTION 7.** ATCP 123.10(1), (3), (6) and (8) are amended to read:

ATCP 123.10(1) Offer to a consumer any prize, prize opportunity, or free or reduced price goods or services whose receipt is conditioned upon an agreement to purchase or lease ~~telecommunications services or cable television services~~ an electronic communications service unless the provider discloses that a purchase is required or lease requirement in connection with every public announcement or advertisement of the prize, prize opportunity, or free or reduced price goods or services.

(3) Misrepresent that a consumer has subscribed to or received a ~~telecommunications service or cable television service~~ an electronic communications service.

(6) Fail to honor, on a timely basis, a consumer's request to cancel a ~~telecommunications service or cable television service~~ an electronic communications service according to this chapter and the terms of the subscription for that service.

(8) Bill a consumer for ~~telecommunications services or cable television services~~ an electronic communications service in violation of this chapter.

**SECTION 8.** ATCP 123.12(1)(b) is amended to read:

ATCP 123.12(1)(b) A subscription change ~~which~~ that a provider of telecommunications ~~provider~~ service implements by means of a tariff under ch. 196, Stats., other than a tariff change under s. 196.196(3) or 196.499(2), Stats.

**SECTION 9.** ATCP 123.14 is repealed.

**SECTION 10. EFFECTIVE DATE:** This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22

(2) (intro.), Stats.

Dated this \_\_\_\_\_ day of November, 2008.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Rodney J. Nilsestuen, Secretary